

## **DETAILED ACTION**

### ***Status of Claims***

Claims 1-21 are currently pending. Claim 1 is withdrawn as drawn to a nonelected invention.

### ***Priority***

This application, filed July 11, 2006, is a national stage entry of PCT/FR05/50035, filed January 21, 2005 and claims priority to provisional application 60/541,238, filed February 4, 2004. Applicants also claim priority to French application 0450109, filed January 21, 2004 in France. Applicants have provided a certified copy of this document and have provided an English translation of the provisional application.

### ***Withdrawn Objection and Rejections***

1. The objection to the Abstract for informalities is withdrawn in view of Applicant's amendment.
2. The rejection of claims 2, 9-12 and 20 under 35 U.S.C. 103(a) over Lydzinski et al. (US 2003/0099692) and Fellows et al. (US 4,925,667) is withdrawn in view of Applicant's arguments.
3. The rejection of claims 3-8 and 15 under 35 U.S.C. 103(a) over Lydzinski et al. (US 2003/0099692), Fellows et al. (US 4,925,667) and Lu et al. (US 2003/0235553) is withdrawn in view of Applicant's arguments.
4. The rejection of claims 13-14 and 16-19 under 35 U.S.C. 103(a) over Lydzinski et al. (US 2003/0099692), Fellows et al. (US 4,925,667) and Tan et al. (US 6,511,672) is withdrawn in view of Applicant's arguments.

***New Rejections***

**5. Claims 2-3, 6, 9-14, 16-18 and 20-21 under 35 U.S.C. 103(a) as being unpatentable over Lydzinski et al. (US 2003/0099692) (pub. May 29, 2003) in view of Castro (US 6,409,997) (issued June 25, 2002).**

Regarding claims 2-3, 6, 9-14, 17 and 20-21, Lydzinski et al. teach a method of delivering agents to humans by applying a film comprising starch (polysaccharide polymer) as the main component (abstract). The starch is modified (para. 0005) to dissolve or disintegrate quickly when exposed to water or an aqueous fluid, (para. 0010). The starch is blended and then dispersed in water or other solvent and dried into film form. The film may be used to deliver a variety of agents to the skin, including sun protection agents such as ethylhexyl methoxycinnamate (octyl methoxycinnamate) (para. 0091). The film may also comprise pigments (para. 0024). The film is dried so that some amount of water or other solvent remains (para. 0031). Therefore, if the starch is dispersed in a solvent other than water and dried, the film is anhydrous. However, Lydzinski et al. fail to teach that the sun protection agents are applied to the lips. Castro cures this deficiency.

Castro teaches an anhydrous cosmetic stick that delivers sun protection agents including ethylhexyl methoxycinnamate (abstract and Table 1). Castro further teaches that the compositions may be applied to the face and lips to obtain the benefit of the sunscreen (column 3, lines 58-62).

It would have been prima facie obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Lydzinski et al. with those of

Castro to apply the anhydrous sun protection film to the lips. One would have been motivated to do so because Lydzinski et al. teach a cosmetic film activated to dissolve when placed in contact with saliva or water that delivers sunprotection and Castro teaches that sunprotection agents are applied to both facial skin and the lips. As with any lip gloss or lip stick, the wearer ensures uniform distribution of the color by either rubbing the lips with a finger or by rubbing the lips together. This also allows uniform distribution of the saliva that activates the film taught by Lydzinski et al.

Regarding claim 13, Castro teaches that the sunscreen cosmetic stick further comprises retinyl palmitate (a skin tightening agent) (Table 1).

Regarding claim 14, Lydzinski et al. teach the film need not be prepared on a substrate (para. 0029).

Regarding claim 16, the rejection of claim 20 is hereby incorporated. Further Castro teaches that non-oil emollients such as butyloctyl salicylate are included in the sunscreen cosmetic stick to help maintain the soft, smooth and pliable appearance of the skin as a result of their ability to remain on the skin surface or in the stratum corneum to act as lubricants to reduce flaking and improve the skin appearance (column 3, lines 7-16).

It would have been prima facie obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Lydzinski et al. with those of Castro to apply the anhydrous sun protection film to the lips. One would have been motivated to do so to improve skin appearance.

Regarding claim 18, the rejection of claim 20 is hereby incorporated. Further Castro teaches that the sunscreen cosmetic stick further comprises retinyl palmitate (a skin tightening agent) (Table 1).

It would have been prima facie obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Lydzinski et al. with those of Castro to include retinyl palmitate in the sunscreen cosmetic stick to improve the skin appearance. One would have been motivated to do so to improve skin appearance (column 2, lines 29-37 and column 3, lines 17-29).

**6. Claims 3-5, 7-8, 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lydzinski et al. (US 2003/0099692) (pub. May 29, 2003) in view of Castro (US 6,409,997) (issued June 25, 2002) as applied to claims 2-3, 6, 9-14, 16-18 and 20-21 above, and further in view of Lu et al. (US 2003/0235553) (pub. Dec. 25, 2003).**

The combination of Lydzinski et al. and Castro teach each element of claim 20 but fail to teach the specific coloring agents that may be used in an anhydrous sun protection film. Lu et al. cure this deficiency.

Regarding claims 3-5, Lu et al. teach an anhydrous lipstick film (para. 0244) wherein the coloring agent may be a pigment or water-soluble dye such as methylene blue or beetroot juice (paras. 0494 and 0495).

It would have been prima facie obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Lydzinski et al. and Castro with

those of Lu et al. to substitute a water-soluble dye such as methylene blue or beetroot juice for a pigment. One would have been motivated to do so because Lydzinski et al. and Castro teach that the film may comprise a pigment and may be applied to the lips and Lu et al. teach that an anhydrous film may be used as a lipstick and may comprise a pigment or water-soluble dye as the coloring agent.

Regarding claim 7, Lu et al. teach that the anhydrous film comprises a pigment used as a coloring agent and that the pigment may be goniochromatic (paras. 0244 and 0496).

Regarding claim 8, Lu et al. teach that the coloring agent is present from 0.01 to 50% relative to the total weight of the composition (para. 0494). MPEP 2144.05 states that "[i]n the case where the claimed ranges 'overlap or lie inside ranges disclosed by the prior art' a *prima facie* case of obviousness exists" quoting *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976). In the instant case, the claimed range overlaps the range taught by the prior art and is therefore *prima facie* obvious.

Regarding claim 15, the rejection of claim 20 above is incorporated. However, the combination of Lydzinski et al. and Castro fail to teach the specific coloring pigment. Lu et al. teach an anhydrous lip film wherein that the anhydrous film comprises a pigment used as a coloring agent and that the pigment may be goniochromatic (paras. 0244 and 0496).

It would have been *prima facie* obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Lydzinski et al. and Castro with those of Lu et al. to use a goniochromatic pigment in an anhydrous lip composition. One

would have been motivated to do so because Lydzinski et al. and Castro teach that the film may comprise a pigment and may be applied to the lips and Lu et al. teach that an anhydrous film may be used as a lipstick and may comprise a goniochromatic pigment.

***Response to Arguments***

Applicant's arguments filed March 3, 2010 are persuasive.

***Conclusion***

No claims are allowable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicoletta Kennedy whose telephone number is (571)270-1343. The examiner can normally be reached on Monday through Thursday 8:15 to 6:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Gollamudi Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. K./  
Examiner, Art Unit 1611

/Sharmila Gollamudi Landau/  
Supervisory Patent Examiner, Art Unit 1611